Supreme Court, U.S.
FILED

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No. 99-_____

In the
Supreme Court of the United States
October Term, 1999

Edbert Neal Williams,

Petitioner,

v.

The State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Paul Charles Thissen
Counsel of Record
Special Assistant State Public Defender
Briggs and Morgan, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2157
(612) 334-8400

Attorney for Petitioner

1999 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

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QUESTION PRESENTED

Whether the standard for materiality under *Brady v. Maryland*, 373 U.S. 83 (1963), depends on whether the defendant might have discovered the suppressed evidence on his own.

RULE 29 STATEMENT
PARTIES TO THE PROCEEDING

The petitioner is Edbert Neal Williams.

The respondent is the State of Minnesota.

TABLE OF CONTENTS

QUESTION PRESENTED i

RULE 29 STATEMENT ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 9

A. THE MINNESOTA SUPREME COURT'S DECISION THAT *BRADY* DOES NOT REQUIRE THE STATE TO DISCLOSE FAVORABLE EVIDENCE THAT A DEFENDANT MIGHT FIND ON HIS OWN IS CONTRARY TO THIS COURT'S CASE LAW 9

B. THE BULTMAN EVIDENCE WAS MATERIAL WHEN ASSESSED UNDER THE CORRECT STANDARD 13

CONCLUSION 15

TABLE OF AUTHORITIES

FEDERAL CASES

Berger v. United States, 295 U.S. 78, 88 (1935) 11

Bowen v. Maynard, 799 F.2d 593, 613 (10th Cir. 1986) 13

Brady v. Maryland, 373 U.S. 83 (1963) ..... i, 8-13

Kyles v. Whitley, 514 U.S. 419, 432 (1995) 10, 11, 12

Pennsylvania v. Ritchie, 480 U.S. 39 (1987) 14

Sellers v. Estelle, 651 F.2d 1074, 1077 (5th Cir. Unit A 1981) 10

United States v. Agurs, 427 U.S. 97, 111 (1976) 11

United States v. Bagley, 473 U.S.667 (1985).. 9, 10, 11, 13, 14

United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982) 14

STATUTES AND RULES

SUP. CT. R. 10(c) 9

Petitioner Edbert Neal Williams seeks a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 593 N.W.2d 227 (1999). (A-1-A-24.) The Ramsey County, Minnesota, District Court did not issue an opinion.

JURISDICTION

The Minnesota Supreme Court issued its decision on April 22, 1999.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."
> U.S. CONST., amend. XIV.

STATEMENT OF THE CASE

1. Genelda Campeau Is Killed

On January 12, 1996, Genelda Campeau was killed in her home at 1222 Edmond Avenue in St. Paul, Minnesota. Her granddaughter, Shelly Campeau, suffered two stab wounds.

Police officers found Shelly standing in the middle of the street, screaming that somebody had killed her grandmother. (Tr. 1151-52.)[1] The officers interviewing Shelly at the scene found her story hard to follow, but eventually she identified Petitioner, Edbert Neal Williams, as the killer. (Tr. 1153, 1193-94.)

When the police entered the house, they found Genelda's body in the living room with stab wounds in the neck area. (Tr. 1162, 1181.) Police testimony about the state of the body was inconsistent. Some officers' observations suggested that Genelda had been dead for hours. Officer Peck testified (consistent with his police report) that the blood in the area of the wounds looked dry. (Tr. 1186.) Officer Radke stated in his report that Genelda's body was cold to his touch. (Tr. 1162.) Officer Malmgren, on the other hand, testified at trial that the body was not cold and that the blood near the wounds was "liquid." Malmgren, however, never filed a contemporaneous report setting down those observations. (Tr. 1657, 1660, 1712-13.) The police found no physical evidence linking Petitioner to the crime scene.

The investigator for the medical examiner, who arrived at 11:00 p.m., found the body to be in relatively early stages of rigor mortis and felt some warmth in the torso. (Tr. 1779, 1782-83.) The medical examiner was unable to state the precise time of death and could not deny that Genelda

[1] ("Tr.") refers to the Transcript of Proceedings filed in the Minnesota Supreme Court.

Campeau could have died as early as 5:00 to 5:30. (Tr. 1856.)

2. Shelly Campeau's Story About The Killing

Shelly Campeau was the only eyewitness to the crime. By all accounts, she acted hysterically (at least in public) on the night Genelda Campeau was killed. (Tr. 1094, 1112, 1152, 1179, 1192.) Shelly testified that on January 12, 1996, Petitioner (who was the father of Shelly's son) called and asked if he could visit his son, Dominic. (Tr. 1313.) After a short discussion, Shelly agreed. (Tr. 1313.) Shelly testified that Petitioner arrived between 6:30 and 7:00 p.m. (Tr. 1317.) Petitioner, Shelly, Genelda and the baby watched television. There was nothing aggressive about Petitioner's behavior. Shelly saw no weapons on Petitioner. (Tr. 1512.)

At some point after Petitioner arrived, a friend of Shelly arrived and she went out to talk to him for 10-20 minutes. (Tr. 1327-28.) After she came back in, Shelly testified that she left the living room again to get a diaper for Dominic. (Tr. 1333.) The diaper was in the bedroom just down the hall. She testified that as she reached the bedroom – just seconds later – she heard a noise. (Tr. 1335, 1511, 1530.) She rushed back to the living room and testified that she saw Petitioner standing over Genelda. Shelly testified that she saw Petitioner stab Genelda twice. (Tr. 1335, 1339, 1512.)[2] According to Shelly's testimony, then, in the very few seconds that Shelly was out of the room, Petitioner obtained a knife, returned and stabbed Genelda multiple times. Shelly testified that she pulled Petitioner off Genelda, struggled with Petitioner and was stabbed herself twice. (Tr. 1347.)

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[2] Shelly testified that Petitioner was standing over Genelda's body, which was on the floor, and stabbing her. Notably, the stab wounds on Genelda's body are not consistent with an attack by a right-handed person like Petitioner.

There is no dispute that a struggle between Shelly and Petitioner occurred outside the house before Petitioner left the property. (Tr. 1537.) The accounts of the struggle are inconsistent, however. In some versions, Shelly is attempting to escape from Petitioner. (Tr. 1516-17.) In others, Petitioner is the one trying to elude Shelly (Tr. 1125, 1130-31.) Of course, if as Petitioner claimed, he arrived after Genelda was already murdered and Shelly was trying to pin the crime on him, it wouldn't be a surprise that he was trying to get away and Shelly wanted to keep him there. It also is not surprising that he was feuding with her.

3. The Bultman Evidence

In the months before the murder, another former boyfriend of Shelly - Gary William Bultman - was threatening, abusing and harassing Shelly and Genelda. Bultman's pattern of abuse and harassment are recorded in a number of police reports and court documents that are included in the record of this case:

- On August 24, 1995 Genelda Campeau accused Bultman of dumping garbage all over her yard five or six times. (Tr. 1425.) The police report on the incident lists "continued problems with Bultman." (Tr. 1425.)

- On September 1, 1995, Bultman slashed the tires on Shelly Campeau's car according to police reports. (Tr. 1420.)

- According to a criminal file in St. Paul, Minnesota, Bultman was charged with burglarizing and damaging property at the Campeau house on October 29, 1995. (Tr. 1426.) The reports show that he threatened Genelda and attacked another guest at the

house. (Tr. 1428.) Significantly, Bultman was not arrested on the charge until January 3, 1998 – just days before the murder. (Tr. 1426.) On January 4, he appeared in court and was released on bail. (Tr. 1426, 1434.) An order of protection was issued. (*Id.*)

- According to another criminal complaint based on reports of Genelda Campeau – this one issued along with a warrant on the day before murder! – Bultman was reported walking around the Campeau house and peering surreptitiously into all the windows on October 31, 1995. (Tr. 1418, 1435, 1436.)

- Shelly Campeau was so frightened of Bultman that she obtained an Order of Protection prohibiting Bultman from being in or on the property at 1222 Edmond. (Tr. 1430.) The Order for Protection is supported by a September 19, 1995 affidavit of Shelly Campeau outlining a long-term pattern of abuse as well as specific instances of abuse. (Tr. 1418, 1436-37.)

- Genelda Campeau and Bultman had a highly acrimonious relationship. On occasion, Bultman called Shelly's grandmother a "fucking cunt." (Tr. 1431.) Genelda Campeau was hotly antagonistic toward Bultman as well. He reported that she called him to yell and swear at him. (Tr. 1432.) Genelda's anger toward Bultman stands in stark contrast, of course, to her amicable relationship with Petitioner. (Tr. 1306-07.)

In addition to this record of abuse and harassment, Petitioner was prepared to offer testimony that Bultman threatened to kill Shelly Campeau. (Tr. 1438.) Moreover, on

the day of the murder, Bultman was in contact with the Campeaus, having called the house several times. (Tr. 1372-73.)

Further, Bohlig – a lead investigator of Genelda's murder - knew about Bultman and the complaints that the Campeaus filed against him. (Tr. 1398.) He chose to ignore Bultman, however, and focus on Petitioner. (Tr. 1398.) Even more outrageous is the fact that the Ramsey County Attorney's Office was actively prosecuting the criminal complaint against Bultman right at the time of Genelda's murder. Yet, despite the fact that the complainant in the case against Bultman was murdered, no one in the County Attorney's Office thought it necessary to disclose the information to Petitioner even after Petitioner requested exculpatory information. (Petitioner's Appendix A.-14 to A-16.)[3] Apparently, neither the St. Paul police nor the Ramsey County Attorney wanted anyone (and, in particular, Petitioner) to look too closely at Bultman's relationship with the Campeaus.

4. The Proceedings Before the Trial Court

The State of Minnesota indicted Petitioner for first degree and second degree murder in the death of Genelda Campeau under Minn. Stat. §§ 609.185(1); 609.19(1) and 609.11. (Petitioner's Appendix A-1 to A-3.) The State also indicted Petitioner for first and second degree attempted murder of Shelly Campeau under Minn. Stat. §§ 609.185(1), 609.19(1), 609.11 and 609.17. (Petitioner's Appendix A-1 to A-3.) Petitioner was tried before a jury in Ramsey County, Minnesota between November 25, 1996, and December 13, 1996. The Honorable Kathleen Gearin presided at trial.

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[3] References to Petitioner's Appendix is to the appendix that the petitioner filed in the Minnesota Supreme Court.

Petitioner's defense to the charges – even in his statement to the police – was that another person committed the murder and attempted murder. In the middle of the trial, Petitioner learned for the first time that Bultman had abused, threatened and harassed Genelda and Shelly Campeau in the several months and days leading up to the murder and attempted murder. (Of course, by that time there was insufficient time to conduct a full investigation.) Notwithstanding that Bultman had a clear motive for the attacks and that Bultman-as-murderer was consistent with Petitioner's defense, the trial court refused to allow Petitioner to present the Bultman evidence to the jury. (Tr. 1462, 1477.) In the absence of that evidence, the jury found Petitioner guilty of first degree murder and attempted first degree murder. (Petitioner's Appendix A-12, A-13.) The trial court sentenced Petitioner to life in prison and a consecutive sentence of 180 months.

5. Proceedings Before the Minnesota Supreme Court

The Minnesota Supreme Court affirmed on direct appeal. First, the Minnesota court upheld the trial court's decision to exclude the Bultman evidence because Peititioner could not place Bultman at the scene of the crime. The court concluded:

> [W]e are not persuaded that the trial court abused its discretion in excluding the Bultman evidence. While there was some evidence that Bultman may have placed telephone calls to Genelda's house on the day of the murder, [Petitioner] offered no evidence placing Bultman at or near Genelda's house on the night of the murder.

(A-13.)

In addition, the Minnesota Supreme Court noted that evidence tending to exonerate the third party is relevant to

determining if evidence of the third party's bad acts is admissible. (A-12.) The court reasoned that this rule also supported affirmance, but only because Petitioner had not adduced evidence putting Bultman at the scene of the crime:

> Moreover, there was substantial affirmative evidence that Bultman did not commit the charged crimes. Shelly, the only eyewitness to the killing, placed Williams, not Bultman, at the crime scene. Spangler identified Williams, not Bultman, as the man fighting with and threatening to kill Shelly in Genelda's yard. Moreover, D.M.I. testified that Williams admitted to having committed the crimes.[4] In light of the overwhelming eyewitness testimony linking [Petitioner] to the charged crimes, [Petitioner's] failure to provide any evidence linking Bultman to Genelda's house on the night of the killing is fatal to his claim.

(A-6 (Emphasis added).)

The Minnesota Supreme Court then addressed Petitioner's argument under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny that the convictions must be reversed because the State failed to disclose the Bultman evidence prior to trial. The court concluded that the lack of "foundation evidence" (i.e., evidence placing Bultman at the

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[4] The D.M.I. lacks credibility. He is a felon at least thirteen times over. (Tr. 1876.) He has a history of acting as a paid informant for a number of law enforcement agencies and admitted at trial he ratted on Petitioner only to "save his own ass." (Tr. 1946, 1948, 1949.) Further, Petitioner was placed in the cell with D.M.I. immediately upon his return from St. Peter Hospital. Finally, even if the D.M.I told the truth, it is understandable that a young man, charged with a serious crime he did not commit and locked in jail, would take desperate actions. Standing alone, the D.M.I.'s story is far from sufficient to convict Petitioner.

scene) rendered the evidence of Bultman's abuse, harassment and motive immaterial for *Brady* purposes. (A-16 – A-17.)

The court acknowledged that, even if the Bultman evidence of abuse and harrassment was insufficient, standing alone, to undermine confidence in Petitioner's conviction, the failure to disclose the Bultman evidence nonetheless could be material "in that it precluded the defense from further investigation based on the Bultman evidence and deprived the defense of the opportunity to adequately incorporate that evidence into [Petitioner's] defense." (A-16, citing *United States v. Bagley*, 473 U.S.667 (1985).)

Still, the Minnesota Supreme Court refused to reverse. It reasoned that (1) failure to disclose the evidence did not prevent the defense from questioning witnesses and discovering the information on its own; (2) there was a reference to "Bill" in the grand jury transcripts; and (3) the parties were given one full day to review the Bultman evidence once it was disclosed. (A-7.) In other words, the Court ruled that because the defense might have discovered the information on its own, the suppressed evidence was not "material."

REASON FOR GRANTING THE WRIT

This Court should grant this petition for certiorari because the Minnesota Supreme Court decided an important question of federal constitutional law in a way that conflicts with relevant decisions of this Court. SUP. CT. R. 10(c).

A. The Minnesota Supreme Court's Decision That *Brady* Does Not Require The State To Disclose Favorable Evidence That a Defendant Might Find On His Own Is Contrary to This Court's Case Law.

The State's affirmative duty to disclose evidence that is favorable and material to the defense, *see Brady*, 373 U.S. at

87; *see also Kyles v. Whitley*, 514 U.S. 419, 432 (1995), includes a duty to disclose evidence that, while not directly exculpatory, may lead the defendant to conduct an investigation that results in exculpatory evidence. Suppression of such evidence impairs the adversary process because "the defense might abandon lines of independent investigation, defenses, or trial strategies that it otherwise would have pursued." *Bagley*, 473 U.S. at 682. Thus, in analyzing the materiality of favorable evidence, a court must "consider directly any adverse effect that the prosecutors failure to respond might have had on the preparation or presentation of the defendant's case." *Id.* at 683. *See also Sellers v. Estelle*, 651 F.2d 1074, 1077 (5th Cir. Unit A 1981).

In the lower court, Petitioner argued that the State's failure to disclose the Bultman abuse and harassment evidence violated the *Brady/Bagley* rule because a reasonable probability existed that, had the information been disclosed in a timely manner, Petitioner would have conducted a more thorough investigation into Bultman and his relationship with the Campeaus. The Minnesota Supreme Court rejected that argument. It explained:

> [W]e find no merit in [Petitioner's] claim that the prosecution's failure to timely disclose the Bultman evidence had material consequences on the defense's ability to investigate or prepare for its case. Nothing the prosecution did prevented the defense from questioning known witnesses about the possibility that a third party may have participated in the killing.

(A-7 (Emphasis added).) The Minnesota Supreme Court committed constitutional error when it misdefined "material" evidence as evidence that the defense would not have

otherwise discovered.[5] Not only does the decision swallow this Court's rule that the State has an obligation to disclose evidence that may assist a defendant's investigation (for it is almost always true that a possibility exists that the defendant will discover the information on his own). The court's reasoning also has no basis in, and is inconsistent with, this Court's *Brady* jurisprudence.

First, this Court has never held that the possibility that the defense might have discovered certain evidence in the absence of prosecutorial disclosure is a relevant inquiry under *Brady* and its progeny. Rather, evidence is material "'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles*, 514 U.S. at 433-34 (quoting *Bagley*, 473 U.S. at 682). If the State's suppression of the evidence "undermines confidence in the outcome of the trial," the evidence is material. *Id.* at 434. The possibility that the defense might have discovered evidence had it looked in the right places is irrelevant to that inquiry.

Indeed, the Minnesota Supreme Court's analysis ignores one of the fundamental underpinnings of the *Brady* rule; namely, that a prosecutor "must always be faithful to his client's overriding interest that 'justice shall be done.' He is the 'servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.'" *United States v. Agurs*, 427 U.S. 97, 111 (1976) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935).) As such, the *Brady* disclosure obligation serves the institutional purpose of encouraging prosecutors to act in the interest of justice and not simply to win. *See Bagley*, 473 U.S. at 675, n. 6 ("By requiring the prosecutor to assist the defense in making its case, the *Brady* rule represents

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[5] The Minnesota Supreme Court's reliance on the reference to "Bill" in the grand jury testimony (A-7) is simply a more specific application of its more general analysis that evidence is only material if the defense could not find it without State disclosure.

a limited departure from a pure adversary model.") As the Court explained more fully in *Kyles*:

> Unless, indeed, the adversary system of prosecution is to descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth, the government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portend such an effect on a trial's outcome as to destroy confidence in its result.
>
> This means, naturally, that a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. This is as it should be. Such disclosure will serve to justify trust in the prosecutor as "the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. The prudence of the careful prosecutor should not therefore be discouraged.

514 U.S. at 439-40. The rule adopted by the Minnesota Supreme Court in this case – that a prosecutor need not disclose favorable information if a possibility exists that the defense will discover the information on its own – creates exactly the opposite incentive for prosecutors.

The Minnesota Supreme Court's decision is particularly invidious where, as here, the evidence (arrest records, criminal complaints, civil protective orders, etc.) is precisely the type of information one would expect the State to have and where the defense requested that the State make a full *Brady* disclosure. (Petitioner's Appendix A-14 to A-17.)

This Court recognizes that "an incomplete response to a specific request not only deprives the defense of certain evidence, but also has the effect of representing to the defense that the evidence does not exist." *Bagley*, 473 U.S. at 682. In other words, not only does the failure to disclose information not assist the defense, but it affirmatively impedes its investigation. The Minnesota Supreme Court ignored this important insight when it concluded that Petitioner could not complain about the State's suppression of evidence because he might have found the information on his own.

B. The Bultman Evidence Was Material When Assessed Under the Correct Standard.

Judged under the proper standard, the State's failure to disclose the Bultman evidence was material. The central issue for the jury in this case was whether to believe Petitioner's position that the crime already had been committed when he arrived or the State's claim that Petitioner killed Genelda Campeau and tried to kill Shelly Campeau. The Bultman evidence provides a concrete alternative to the State's theory of the case. The Bultman evidence both counteracts Shelly Campeau's and the D.M.I.'s testimony and highlights their lack of credibility. And the Bultman evidence underlines the fact that the physical evidence tends to exonerate Petitioner.[6]

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[6] In addition, evidence that raises questions about the manner, quality and thoroughness of the investigation that lead to a defendant's arrest and trial constitutes *Brady* evidence. *Bowen v. Maynard*, 799 F.2d 593, 613 (10th Cir. 1986). Here, a major theme of Petitioner's defense was the sloppiness of the police work in the case. The police neglected to collect fingerprints or collect body hair or clothing fibers. (Tr. 1601, 1710.) The police failed to take scrapings of blood on the porch and did not have some of the blood from the scene analyzed. (Tr. 1601-02, 1604.) The police didn't test the blood allegedly found on Petitioner's hands. (Tr. 1215, 1711.) The lead investigator (who knew about Bultman but decided to pursue the investigation) did not file reports on his investigation of the

The single problem with the Bultman evidence in the Minnesota Supreme Court's view was that Petitioner could not place Bultman at the scene. (A-5 - A-6.) Identifying that as the problem, however, simply begs the question of what difference it would have made had the Bultman evidence been disclosed in a timely fashion, while Bultman's cases (both criminal and civil) were still making their way through the justice system and Bultman could more easily be found.[7] Admittedly, it is uncertain whether the defense would have found evidence that Bultman was on the scene had the State made a timely disclosure. But that uncertainty is a risk that the State should bear because it is responsible for the parties' present inability to determine the outcome of a fully informed investigation. *See Bagley*, 473 U.S. at 683 (noting that a court judging the materiality of a nondisclosure must proceed with "an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response."). *See also Pennsylvania v. Ritchie*, 480 U.S. 39, 58, n. 15 (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982), for the proposition that a defendant need only "make some plausible showing of how [the evidence] would have been both material and favorable to his defense.")

That a more focused and productive investigation is the one of the most important benefits that timely disclosure of the Bultman evidence would have had in this case reveals the

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crime scene and, in fact, does not show up on the list of officers on the scene. (Tr. 1712-13, 1715-20.) Bohlig also decided for no particular reason not to have Petitioner sign the *Miranda* acknowledgment sheet when he interrogated Petitioner. (Tr. 108) The fact that the police focused solely on Petitioner and chose to ignore Bultman casts further doubt on the thoroughness of the police investigation and the validity of the State's case.

[7] Petitioner has made significant but unsuccessful efforts to locate Bultman in the time since the trial.

facileness of the Minnesota Supreme Court's final justifications for finding the Bultman evidence immaterial. The fact that the trial court delayed the trial for one day to allow the parties "to further investigate the Bultman evidence" is no remedy for the several months of investigation time that the defense missed.

CONCLUSION

For the foregoing reasons, Petitioners request that the Court grant their petition for a writ of certiorari to review the decision of the Minnesota Supreme Court.

Respectfully submitted,

Dated: July 19, 1999.

Paul Charles Thissen
Counsel of Record
Special Assistant State
Public Defender
BRIGGS AND MORGAN, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
(612) 334-8400

STATE OF MINNESOTA

IN SUPREME COURT

C2-97-686

Ramsey County — Gilbert, J.

State of Minnesota,

Respondent,

vs.

Edbert Neal Williams,

Appellant.

Filed: April 22, 1999
Office of Appellate Courts

SYLLABUS

The trial court did not abuse its discretion in refusing to admit evidence of the past bad acts of a third party whom the defense has accused of committing the charged crime. The defense did not show that the evidence was relevant and material by providing foundation evidence connecting the third party to the charged crime.

When evidence is merely collateral and speculative, the prosecution's failure to disclose that evidence to the defense does not undermine confidence in the outcome of the verdict and therefore is not reversible error. Here, the defense also had some knowledge of the evidence and failed to investigate it before trial.

Evidence of past abuse of the same victim by a criminal defendant is admissible if the state first shows by clear and

convincing evidence that the defendant committed the past abuse, that the evidence is relevant and material to the state's case, and that the evidence of the past abuse is not unfairly prejudicial.

Under these facts, it was not reversible error for the trial court to seat a juror who initially indicated that he may tend to favor the testimony of a police officer. Subsequent questioning during voir dire by both the state and defense showed that the juror would be able to objectively evaluate and credit the testimony of all witnesses without bias.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

GILBERT, Justice.

In this direct appeal, we are asked to review several claims of error arising out of the trial and conviction of respondent Edbert Neal Williams. On December 13, 1996 a jury found Williams guilty of one count of first-degree premeditated murder for the January 12, 1996 killing of Genelda Campeau and one count of attempted first-degree murder for an attack on Shelly Campeau on the same date. On appeal, Williams argues that his convictions should be reversed for the following reasons: (1) the trial court committed reversible error in suppressing evidence of a third party's past acts of abuse and harassment towards Genelda and Shelly; (2) the prosecution's failure to disclose evidence of this third party violated the disclosure requirements established in *Brady v. Maryland,* 373 U.S. 83 (1963) and Minn. R. Crim. P. 9.01; (3) the trial court committed prejudicial error in admitting evidence of Williams' past acts of abuse towards Shelly; and

(4) the trial court committed plain error in seating a juror who was biased in favor of police officers. We affirm.

Sixty-five year old Genelda Campeau was found stabbed to death in her St. Paul home on the evening of January 12, 1996. Genelda's 18-year old granddaughter, Shelly Campeau, claimed to have been attacked by the same assailant. Shelly suffered two stab wounds, but survived.

Shelly told police officers that the assailant was Williams, her former boyfriend. Shelly and Williams had met and began dating in February 1993 and, in April of that same year, Shelly became pregnant by Williams. Shortly thereafter, Williams began physically and verbally abusing Shelly. This abuse continued after the couple's son, Dominic, was born in January 1994.

At trial, several witnesses testified about three specific instances of abuse. Shelly testified about a December 1993 incident in which she fled into Genelda's house after having a fight with Williams. According to Shelly, Williams then threw rocks at Genelda's house, brandished what looked like a knife or screwdriver, and yelled, "I'll get you." A St. Paul police officer testified about being called to respond to the incident and confirmed some of Shelly's testimony. Both Shelly and her mother, Cheryl Campeau, testified about a January 1994 incident in which Williams threatened them. Both Shelly and Cheryl also testified that, in April, 1994, Williams became physically abusive towards Shelly after learning that Shelly had told a welfare agency that Williams was Dominic's father. According to Shelly, Williams said to her and Cheryl, "I'll get you good."

Shelly stopped dating Williams and, in January 1995, she moved in with Genelda to "get [her] life back together." Shelly had lost custody of Dominic, but had visitation rights

on weekends. Williams had no custody or visitation rights, but Shelly would routinely call him on weekends and allow him to visit Dominic at Genelda's house. Shelly testified that she and Williams had no arguments during 1995 and that Williams and Genelda also "got along" during this period.

According to Shelly, on January 12, 1996, Williams called her at about 5:30 p.m. and asked to see Dominic, who was visiting Shelly at Genelda's house for the weekend. Shelly agreed to let him see Dominic, and Williams arrived at Genelda's house at approximately 6:30 or 7:00 p.m. Upon entering the house, Williams removed his shoes so that he would not track snow into the house. Shelly and Williams spoke briefly about a birthday party Shelly was planning for Dominic. Shortly thereafter, Shelly left the house to speak with a friend who was waiting in his car outside. She remained outside for approximately 10 minutes.

When Shelly returned to the house, Williams, Genelda, and Dominic were in the living room. At trial, Shelly testified that neither Genelda nor Williams appeared upset at this time. However, a few days after Genelda's killing, Shelly had told a child protection worker that Williams became "increasingly agitated" during his visit and threatened to take Dominic.

Shelly testified that when she entered the living room Genelda told her that Shelly's boyfriend had been repeatedly calling and then hanging up when Genelda answered the telephone. Shelly identified this boyfriend as Gary William Bultman. The defense counsel tried to question Shelly about her relationship with Bultman, but the prosecution objected on grounds that the defense had not disclosed who Bultman was. After hearing preliminary arguments by both parties outside the presence of the jury, the court recessed until the next afternoon to allow the parties to gather and present more evidence concerning Bultman. The next afternoon, following

a hearing outside the presence of the jury, the trial court suppressed evidence of Bultman's past relationship with Shelly, concluding that the evidence failed to satisfy the foundational requirements necessary for admitting evidence of a third party's prior acts.

When the trial resumed, Shelly testified that, after returning to the house, she stayed in the living room for about 5 minutes and then went to the bedroom to get a diaper for Dominic. Within a few seconds, she heard a "thumping noise" coming from the living room. Shelly ran back into the living room and saw Williams standing over Genelda with a knife and something white in his hand. Shelly then saw Williams stab Genelda twice. Shelly tried to pull Williams off Genelda, at which point Williams turned towards her and said, "I've been wanting to kill you for a long time." Shelly testified that Williams then came after her with the knife, eventually stabbing her twice, once in the back and once in the chest. At trial, the doctor who examined Shelly after the accident confirmed that Shelly had suffered two stab wounds that, if deeper, may have been life threatening.

Shelly testified that when Williams stabbed her the second time, the knife blade broke and Shelly tried to run out of the house. Williams grabbed Shelly by her sweatshirt, but Shelly slipped out of the shirt and ran outside. Williams followed and the two began struggling in the yard outside of Genelda's house.

Between 7:15 and 7:30 p.m. on January 12, a woman named DonnaJo Spangler drove by Genelda's house and saw a man and a woman fighting outside of the house. At trial, Spangler testified that the woman had no shirt on and was yelling, "He killed my grandma." According to Spangler's testimony, the man was saying, "Shut the fuck up. Shut the fuck up. I'll kill you, bitch." Spangler initially told the police that it appeared

as though the woman was holding onto the man, trying to keep him from leaving, but at trial Spangler testified that the woman was trying to get away from the man. Spangler drove to a nearby Target store where she convinced an off-duty police officer to follow her back to the scene. At trial, Spangler identified Williams as the man involved in the fight.

According to Shelly, after Spangler drove off, Williams let her go, went back into the house, retrieved his shoes and jacket and left. Shelly then returned to the house, grabbed Dominic and her sweatshirt, and ran outside to get help. One of Genelda's neighbors testified that on the evening of January 12, she heard screaming from outside of her house, went outside to investigate and saw a woman standing in front of Genelda's house holding a baby and screaming, "Help. My Grandma." That neighbor then called police.

When the police arrived, Shelly told them that Williams had killed Genelda. A few blocks away, the police apprehended Williams. Police then drove Spangler, who had returned to Genelda's house with a police officer, to the scene of the apprehension where she identified Williams as the man she had seen attacking the woman. During Williams' arrest, officers observed what appeared to be blood on Williams' hands.

At approximately 9:00 p.m., an investigator from the Ramsey County Medical Examiner's Office examined Genelda's body and observed that the torso was warm and that very little rigor mortis had set in. This report, however, contradicted the observations of two officers on the scene, one of whom reported that Genelda's body was cold to the touch and the other of whom reported that some blood on Genelda's neck appeared to be dry.

An Assistant Ramsey County Medical Examiner later performed an autopsy on Genelda's body, but did not examine the body at the scene. From the investigator's report and from the autopsy, the medical examiner estimated that Genelda's death occurred between 7:00 and 8:00 p.m. on January 12, but admitted that she could not rule out earlier times. The medical examiner testified that Genelda had suffered 21 "sharp-force" injuries to her torso, neck, and head and that two of these injuries were fatal. The medical examiner concluded that Genelda's death was a homicide.

When they searched Genelda's house, the police found two portions of a broken knife blade in the kitchen and a knife handle wrapped in a white, man's athletic sock that appeared to have blood on it. The police also observed what appeared to be bloodstains in the kitchen, on the storm door, and on the back porch.

Upon booking Williams, the police photographed his hands but did not perform any tests to confirm that the substance on his hands was blood. Tests performed on Williams' clothes were negative for any signs of blood and, although tests confirmed the presence of small amounts of blood on the inside of William's shoes, the amounts were too small to provide conclusive DNA evidence as to the source of the blood. DNA tests did, however, indicate that blood samples taken from one of the portions of the knife blade and the man's athletic sock were consistent with having come from Genelda. Samples taken from the bloodstain on the storm door were consistent with having come from Shelly. No samples were taken of or testing done on the apparent bloodstain on the porch, nor was the knife handle tested for fingerprints.

Prior to trial, Williams was placed in a cell with D.M.I., a felon with convictions for forgery and fraud. On several

occasions, D.M.I. had served as a confidential informant to both local and federal law enforcement officials. At trial, D.M.I. testified that he befriended Williams and that Williams admitted to him that he had killed Genelda and attacked Shelly. D.M.I. testified that Williams subsequently offered him $1000 to kill Shelly so that she would not testify against Williams. D.M.I. contacted the police about Williams' offer and then began working with the police in a sting operation. The sting netted several recordings of telephone conversations between Williams and D.M.I. in which Williams made incriminating statements but did not expressly say that he had killed Genelda.

The jury found Williams guilty of one count of first-degree premeditated murder for killing Genelda and one count of attempted first-degree murder for attacking Shelly. The trial court sentenced Williams to life in prison for the murder and to a consecutive 180-month sentence for the attempted murder. On appeal, Williams argues that his convictions must be reversed because: (1) the trial court abused its discretion in suppressing evidence concerning Bultman's past relationship with Shelly; (2) the prosecution's failure to disclose evidence concerning Bultman to the defense violated the disclosure requirements of *Brady*, 373 U.S. at 83 and Minn. R. Crim. P. 9.01; (3) the trial court abused its discretion in admitting testimony about Williams' past acts of abuse towards Shelly; and (4) the trial court committed reversible error by seating a juror who, during voir dire, admitted that he tended to believe police officers more than other witnesses.

I.

During cross-examination, the defense tried to question Shelly about her relationship with Gary William Bultman, the man whom Shelly had identified as the one who made repeated calls to Genelda's home on the day of the murder.

The state, however, objected to that line of questioning and the court then heard each party's arguments outside the presence of the jury. The prosecution claimed that it had never heard the name Gary William Bultman. The defense responded that it had just learned of evidence the evening before - including police reports, a restraining order, and an interview between Genelda and an insurance agent - that showed that in October 1995 Bultman had threatened Shelly and Genelda. At the requests of the defense and prosecution, the court then ordered a recess until 3:00 p.m. the next day to give the parties time to examine the Bultman evidence and develop arguments concerning its admissibility.

The next afternoon, at a hearing outside the presence of the jury, the court summarized the defense's evidence linking Bultman with the Campeaus. The evidence provided by the defense included two Dakota County court files and various police reports concerning run-ins Bultman had with the Campeaus in 1995. The defense also provided a transcript of an interview between Genelda and an insurance agent concerning an incident in October 1995 in which Bultman broke into Genelda's home and threatened a friend of Shelly's. This evidence revealed that Bultman was Shelly's ex-boyfriend and had a history of abusing Shelly and harassing Genelda. The police and court records showed that in 1995 Shelly had applied for and received an order for protection against Bultman. Police and court records also showed that throughout the latter half of 1995, Bultman had harassed and threatened Genelda and Shelly, had vandalized their property, and had broken into Genelda's house and threatened a male friend of Shelly's. With respect to this last incident, Bultman had appeared in court to contest the charges on January 3, 1996 and was released on bail. On January 11, 1996, one day before Genelda's killing, a criminal complaint was issued against Bultman for a 1995 incident in which he was observed peering into Genelda's windows; however, there was no

evidence in the record that Bultman knew of that complaint. The defense asserted that this evidence tended to incriminate Bultman in the charged crimes and therefore was relevant to show that Williams did not commit the crimes.

The trial court suppressed this Bultman evidence, reasoning that the defense had not met the foundation requirements necessary to admit it. On appeal, we will only reverse the lower court's decisions concerning the admissibility of evidence if the court abused its discretion. *See State v. Gustafson, 379* N.W.2d 81, 84 (Minn. 1985).

We have long recognized that a criminal defendant should "have the right to show that crimes of a similar nature have been committed by some other person when the acts of such other person are so closely connected in point of time and method of operation as to cast doubt upon the identification of defendant as the person who committed the crime charged against him." *State v. Bock,* 229 Minn. 449, 458, 39 N.W.2d 887, 892 (1949). Accordingly, we have held that, pursuant to Minn. R. Evid. 404(b), "a *defendant* may seek to introduce evidence of other crimes or misconduct of a third person to prove that the *third person,* rather than the defendant, committed the crime." *State v. Johnson,* 568 N.W.2d 426, 433 (Minn. 1997); *see generally State v. Spreigl,* 272 Minn. 488, 139 N.W.2d 167 (1965). To admit such "reverse-*Spreigl*" evidence, the defendant must show: (1) clear and convincing evidence that the third party participated in the reverse-*Spreigl* incident; (2) that the reverse-*Spreigl* incident is relevant and material to the defendant's case; (3) that the probative value of the reverse-*Spreigl* evidence outweighs its potential for unfair prejudice. *Johnson,* 568 N.W.2d at 433; *see also State v. Whittaker,* 568 N.W.2d 440, 449 (Minn. 1997); *accord* Minn. R. Evid. 403, 404(b).

Here, neither side disputes that the numerous police reports and court documents detailing Bultman's acts of abuse towards Shelly and harassment towards Genelda provide clear and convincing evidence that Bultman was involved in the reverse-*Spreigl* incidents. Moreover, since the Bultman evidence was being offered by the defense, there was little concern about it being unfairly prejudicial. Thus, the only factor at issue with respect to the Bultman evidence is whether it was sufficiently relevant and material to Williams' case.

In Johnson and *Whittaker* we addressed the relevancy issue by examining the similarities between the charged crime and the reverse-*Spreigl* crimes. *See Johnson*, 568 N.W.2d at 434; *Whittaker*, 568 N.W.2d at 449-50. In those cases, however, the defense alleged that the reverse-*Spreigl* crimes were so similar to the charged crimes that whoever committed one crime necessarily committed the other. *See Johnson*, 568 N.W.2d at 434; *Whittaker*, 568 N.W.2d at 449-50. In this case, Williams is not arguing that Bultman's prior acts of abuse were signature crimes. Rather, he asserts that the "several specific acts of abuse and harassment coupled with threats directed toward the victims of the crime that occurred in the months just before the murder and attack * * * show Bultman had the motive to commit the crime and the means to accomplish it (he'd engaged in physical attacks at the house before)."

We established the general guidelines for admitting such evidence in *State v. Hawkins*, 260 N.W.2d 150 (Minn. 1977), where we recognized that:

> [p]roper foundation must be laid for the admission of such evidence * * * to avoid the consideration of matters collateral to the crime. "The rule is that (evidence of such acts) by a third person against the

> victim may not be shown unless coupled with other evidence having an inherent tendency to connect such other person with the actual commission of the crime." That is, evidence tending to incriminate another is inadmissible in the absence of proof of facts to connect that person with the crime. This requirement avoids the use of bare suspicion and safeguards the third person from indiscriminate use of past differences with the deceased.

Id. at 159 (citations omitted). Once the proper foundation evidence is laid, "it is permissible to introduce evidence of a motive of the third person to commit the crime, threats by the third person, or other miscellaneous facts which would tend to prove the third person committed the act." *Id.* (footnotes omitted).

In cases in which we have upheld or required the admission of evidence of other bad acts by a third party, there always has been some direct evidence placing the third party at the scene of the charged crime. In *Hawkins*, for example, the third party was the only eyewitness to the crime and the prosecution's chief witness. *See Id.* at 160. Likewise, in *State v. Anderson*, 379 N.W.2d 70 (Minn. 1985), the evidence showed that a third party was present at the crime scene. *Id.* at 80. Here, while the Bultman evidence showed that Bultman had committed some incriminating acts in the past, it failed to connect Bultman to the scene of the charged crime on the date the charged crime occurred.

Also relevant to our analysis is evidence tending to exonerate the third party of the charged crimes. In *State v. Ashby*, 567 N.W.2d 21 (Minn. 1997), for example, we affirmed the suppression of a third party's alleged admission to the charged crime because there was no physical evidence linking the third party to the crime and because an eyewitness testified

that she was certain that the killer was not the third party. *Id.* at 26; *see also State v. Wilford*, 408 N.W.2d 577, 579-80 (Minn. 1987) (holding that evidence of a third party's prior felonies was properly excluded, in part, because scientific evidence showed the defendant committed the charged crime). Similarly, in *State v. Harris*, 560 N.W.2d 672 (Minn. 1997), we held that evidence that the accused third party had spoken to the victim on the night of the murder was insufficient to lay the required foundation where the third party had an alibi in the form of three witnesses who said the third party was with them on the night of the killing. *Id.* at 679-80; *see also Gustafson*, 379 N.W.2d at 84.

Applying those considerations to the present case, we are not persuaded that the trial court abused its discretion in excluding the Bultman evidence. While there was some evidence that Bultman may have placed telephone calls to Genelda's house on the day of the murder, Williams offered no evidence placing Bultman at or near Genelda's house on the night of the murder. As the above summary of our case law indicates, evidence of the prior incriminating acts alone is not sufficient to establish the required *Hawkins* foundation. Moreover, there was substantial affirmative evidence that Bultman did not commit the charged crimes. Shelly, the only eyewitness to the killing, placed Williams, not Bultman, at the crime scene. Similarly, Spangler identified Williams, not Bultman, as the man fighting with and threatening to kill Shelly in Genelda's yard. Moreover, D.M.I. testified that Williams admitted to having committed the charged crimes. In light of the overwhelming eyewitness testimony linking Williams to the charged crimes, Williams' failure to provide any evidence linking Bultman to Genelda's house on the night of the killing is fatal to his claim. The Bultman evidence simply does not cast doubt upon the identification of Williams as the person who committed the crime charged

against him. Accordingly, we hold that the trial court did not abuse its discretion in suppressing the Bultman evidence.

II.

Williams next argues that, even if the trial court did not err in suppressing the Bultman evidence, Williams' convictions must be reversed because the state failed to disclose the Bultman evidence prior to trial.

In *Brady v. Maryland*, 373 U.S. 83 (1963) the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused * * * violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. Thus, in criminal cases, the state has an affirmative duty to disclose evidence that is favorable and material to the defense. *Id; see also Kyles v. Whitley*, 514 U.S. 419, 432 (1995).

The state asserts that *Brady* should not apply in this case because the prosecutors trying the case did not know of the Bultman evidence until the defense counsel brought it up during Shelly's cross examination. However, whether the prosecutors actually knew of the Bultman evidence is not dispositive for *Brady* purposes. *See Kyles*, 514 U.S. at 437. Rather, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Id.* Regardless of whether the prosecution succeeds in this duty, the state's duty to disclose material, favorable evidence is "inescapable." *Id.* at 437-38. Minnesota's Rules of Criminal Procedure similarly obligate prosecutors to disclose material exculpatory information "in the possession or control of * * * the prosecution staff and of any others who have participated in the investigation * * * of the case and who either regularly

report or with reference to the particular case have reported to the prosecuting attorney's office." Minn. R. Crim. P. 9.01, subd. 1(7).

Here, the police, including some of the same investigators working on this case, knew of Bultman's past acts of abuse towards the Campeaus. Moreover, several of Bultman's past acts of abuse were documented with the Ramsey County Attorney. Thus, if the Bultman evidence was material to Williams' guilt, the prosecutors had a duty to disclose it.

The United States Supreme Court has held that "favorable evidence is material * * * 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles*, 514 U.S. at 433-34 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Id.* at 434 (quoting *Bagley*, 473 U.S. at 678).

In our foregoing analysis of the trial court's suppression of the Bultman evidence we held that, because of a lack of foundation evidence, the Bultman evidence was not material and relevant to the state's claim and its suppression was not error. That same analysis holds true with respect to analyzing the materiality of the evidence for *Brady* purposes. Nothing in the Bultman evidence itself exonerates Williams, nothing directly impeaches or contradicts the testimony of any of the state's witnesses, and Williams failed to provide any evidence linking Bultman to the charged crimes. Moreover, the conclusions that Williams asks us to draw from the Bultman evidence - that Bultman, not Williams, killed Genelda and attacked Shelly - are mere speculation and contradict the sworn testimony of at least three witnesses. Given the

collateral and speculative nature of this evidence, the prosecution's failure to disclose it does not undermine our confidence in the outcome of Williams' trial.

Williams, however, argues that even if the Bultman evidence itself was not material, the prosecution's failure to timely disclose that evidence was material in that it precluded the defense from further investigation based on the Bultman evidence and deprived the defense of the opportunity to adequately incorporate that evidence into Williams' defense. Williams correctly points out that in analyzing the materiality of the undisclosed favorable evidence:

> the reviewing court may consider directly any adverse effect that the prosecutor's failure to [disclose] might have had on the preparation or presentation of the defendant's case. The reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been mislead by the prosecutor's [non-disclosure].

Bagley, 473 U.S. at 683.

After reviewing the record, however, we find no merit to Williams' claim that the prosecution's failure to timely disclose the Bultman evidence had material consequences on the defense's ability to investigate or prepare for its case. Nothing the prosecution did prevented the defense from questioning known witnesses about the possibility that a third party may have participated in the killing. Indeed, the theory that a person other than Williams committed the crimes was the defense's theory of the case throughout trial.

Moreover, the defense knew of Bultman's relationship with the Campeaus prior to trial. The defense had been given and had reviewed grand jury transcripts and police reports indicating that Shelly said that "Bill" had repeatedly called Genelda's house on the day of the killing. The defense, however, chose not to investigate who "Bill" was until after the jury had been seated. The week before Shelly was to testify, a defense investigator requested and subsequently obtained police records and insurance information concerning Bultman's actions towards the Campeaus. While the defense counsel claimed he was not made aware of the contents of those reports until the evening before Shelly testified, by the time he cross-examined Shelly he knew the highlights of Bultman's relationship with Shelly and Genelda.

In addition, at the defense's request, the court granted the parties a day to fully review the Bultman evidence and prepare arguments as to its admissibility. The defense never indicated that additional time was needed to further investigate the Bultman evidence. In ruling the Bultman evidence inadmissible, the trial court also stated that if additional evidence adding validity to the defense's claim that Bultman killed Genelda came to light, the court would reconsider its ruling. No such evidence was ever offered. Accordingly, we hold that neither the Bultman evidence itself nor the state's failure to timely disclose it were material to Williams' case and, thus, the state's failure to disclose the evidence was not reversible error.

III.

Williams' third claim of error concerns the trial court's admission of testimony relating to Williams' past acts of abuse against Shelly. Specifically, Williams alleges that the abuse was too dated to have significant relevance and that the

introduction of the evidence through multiple witnesses was unfairly prejudicial. Again, we generally defer to the trial court's exercise of discretion in evidentiary matters of this nature and will only reverse a trial court's decisions concerning evidentiary matters where there has been a clear abuse of discretion. *See Gustafson*, 379 N.W.2d at 84; *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989).

Evidence of a defendant's past abuse of a victim is not admissible to prove character in order to show that the defendant acted in conformity with that character, but may be admissible to show "'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *State v. Buggs*, 581 N.W.2d 329, 336 (Minn. 1998) (quoting Minn. R. Evid. 404(b)). For such evidence to be admissible, the state must provide clear and convincing evidence that the defendant committed the prior bad acts and must show that the probative value of the evidence is not outweighed by its potential for unfair prejudice. *See Id.*; Minn. R. Evid. 403.

Here, the evidence that Williams committed the prior bad acts was clear and convincing. Williams' involvement in the past acts of abuse against Shelly was confirmed by police reports and eyewitness testimony.

As for probative value of the evidence, we have on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim. In *State v. Volstad*, 287 N.W.2d 660 (Minn. 1980), for example, we stated that evidence of prior assaults against the victim by the defendant may be "properly admitted for the purpose of illuminating the relationship of defendant and complainant and placing the incident with which defendant was charged in proper context." *Id.* at 662. Similarly, in *State v. Mills*, 562 N.W.2d 276 (Minn. 1997), we recognized that "[c]haracter evidence which tends to show the

'strained relationship' between the accused and the victim is relevant to establishing motive and intent and is therefore admissible." *Id.* at 285 (citing *State v. Flores*, 418 N.W.2d 150, 159 (Minn. 1988); *State v. Blanchard*, 315 N.W.2d 427, 431 (Minn. 1982)).[1]

The timing of Williams' prior acts does not necessarily detract from the evidence's relevance. In *State v. Bolte*, 530 N.W.2d 191 (Minn. 1995), we recognized that "'[o]lder' offenses sometimes are relevant, sometimes not." *Id.* at 198 (citation and internal quotations omitted). In *Mills*, we affirmed the admission of an act that occurred over eight years prior to the charged crime. 562 N.W.2d at 285. Here, even though Williams' acts of abuse occurred more than a year before the killing, evidence of those acts was still relevant to provide the jury with a full understanding of the nature of Williams' and Shelly's relationship.

With respect to the potential prejudice of this evidence, Williams argues that the cumulative effect of allowing multiple witnesses to testify about his abuse of Shelly rendered the evidence unfairly prejudicial. However, the defense was informed before trial that the evidence of Williams' abuse would be admitted via multiple witnesses, yet made no objection to the manner in which the evidence came in. Moreover, the linchpin of the defense's case was to undermine Shelly's credibility. The defense's attacks on Shelly's honesty may have reasonably necessitated the state's confirmation of Williams' abuse through other witnesses.

We note that the trial court gave no limiting instructions as to the proper use of the evidence of William's past abuse, either prior to or after the admission of that evidence. We have

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[1] The relevance of such evidence is also acknowledged by Minn. Stat. § 634.20 (1998).

recognized that giving such instructions both before and after 404(b) evidence is introduced helps ensure that the jury uses the evidence only for the permissible purposes espoused in Rule 404(b) or our case law, and not to convict the defendant on the basis of the prior bad acts. *See Buggs*, 581 N.W.2d at 336; *State v. Frisinger*, *484* N.W.2d 27, 31 (Minn. 1992.) However, in the present case, the defense never requested limiting instructions. While a trial court should generally still provide such instructions *sua sponte* to ensure that the 404(b) evidence is not used for an improper purpose, the failure to provide limiting instructions absent a request is not reversible error. *Frisinger*, 484 N.W.2d at 31. Moreover, although the failure to give limiting instructions in certain circumstances may constitute plain error, we hold that it does not do so in this case.

Here, even without limiting instructions, there were several factors reducing the 404(b) evidence's potential for unfair prejudice. Witnesses testified that Williams had committed no acts of abuse in the year prior to the killing and that Shelly, Genelda, and Williams had gotten along during this period. This testimony helped put Williams' past abuse into context. Moreover, at the defense's request, the trial court did provide the jury with *Spreigl* limiting instructions regarding the admission of D.M.I.'s testimony about Williams' alleged attempt to have Shelly killed. These instructions were given both prior to D.M.I.'s testimony and at the close of trial. In addition to specifically cautioning the jury against improper use of D.M.I.'s testimony, they provided a more general admonition that Williams was "not to be convicted for any crimes other than the crimes charged in the indictment." Given these factors, the probative value of the evidence of William's past abuse was not outweighed by its potential for unfair prejudice. Accordingly, we hold that the trial court did not abuse its discretion in admitting the evidence.

IV.

Williams' final argument is that his conviction must be reversed because the trial court seated a juror, D.W.F., who during *voir dire* had answered "yes" when asked if he "would tend to believe a police officer either more or less than any other witness." Williams argues that this case is analogous to *State v. Logan*, 535 N.W.2d 320 (Minn. 1995), where we reversed a conviction because the trial court had seated a juror who had admitted bias towards police. *Id.* at 323-24.

Minnesota Rule of Criminal Procedure 26.02, subdivision 5 (1), lists the ground on which a juror may be challenged for cause, including: "[t]he existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging." Generally, a court's decision regarding a juror's claims of impartiality or bias "is entitled to 'special deference' because 'the determination is essentially one of credibility, and therefore largely one of demeanor.'" *Logan, 535* N.W.2d at 323 (quoting *Patton v. Yount*, 467 U.S. 1025, 1037-38 (1984)). However, in challenging the seating of a juror, the appellant need only show that the juror was biased, not that the bias resulted in actual prejudice. *Id.* at 324. Accordingly, "when it has been shown that those charged with bringing a defendant to judgment lack objectivity, 'a reviewing court can neither indulge a presumption of regularity nor evaluate the resulting harm.'" *Id. (quoting Vasquez v. Hillery*, 474 U.S. 254, 263-64 (1986)).

In *Logan* we held that the trial court committed reversible error in seating a juror who had admitted bias in favor of police officers. *Id.* There, the juror indicated during *voir dire* that he thought it would be "virtually impossible for [him] to conclude as a juror that a police officer had testified falsely in

this case." *Id.* at 322. In seeking to rehabilitate that juror, the prosecution asked " a series of leading questions, the answers to which indicated that [the juror] would follow the instructions of the court to the best of his ability." *Id.* On further questioning by the defense counsel, however, the juror stated:

> I'm not to the point of saying that I would take [police] testimony or what they say as the number one priority, but I happen to respect their work and what they do.
>
> * * * *
>
> I do feel that I'm going to favor in some way, shape or form what they do because that's how I feel.

Id. at 323.

The facts of the present case are not analogous to *Logan.* Here, while D.W.F. did state on the *voir dire* questionnaire that he would tend to believe police officers more than other witnesses, his testimony during *voir dire* negates claims that he lacked objectivity. Unlike the juror in *Logan,* D.W.F. never stated unequivocally that he was biased towards police officers. Moreover, in response to questions *by the defense counsel,* D.W.F. made the following statements:

> Q: Okay. So, in other words, you wouldn't treat a police officer any differently -
>
> A: No.
>
> Q: -- than an eyewitness just because they were a police officer?

A: No, I wouldn't.

Q: And if you listen to a police officer, and you didn't think that his testimony was worthy of belief, you could reject it?

A: Yes, I could.

Q: And the same as you would any other witness?

A: Uh-huh.

Q: On the other hand, if you thought the police officer's testimony was pretty credible, you could accept it?

A: Uh-huh.

Q: Okay. But not because he was a police officer?

A: No, not necessarily, no.

Q: Is that correct?

A: No, I would have to listen to the facts.

In responding to further defense questions, D.W.F. stated under oath that he could listen to the evidence presented at trial, could keep an open mind, and, if the evidence did not prove the state's case, could return a verdict of not guilty. Following this questioning, the defense counsel, rather than object or renew his objection for cause[2] or use his remaining

[2] The record contains some discrepancy with respect to whether the defense ever actually moved to dismiss D.W.F. for cause. The transcript of the *voir dire* proceeding does not indicate that the defense counsel ever made such a motion, but does state that, after the defense counsel questioned D.W.F. regarding his statement about police officers, the

preemptory challenge, expressly accepted the juror. Based on this evidence, we hold that Williams failed to establish that D.W.F. was biased.

Moreover, the transcripts of the *voir dire* examination indicate that the trial court was properly sensitive to the issue of police bias. While the court had denied several challenges for cause based on police bias, in each instance the prospective juror was sufficiently rehabilitated by subsequent questioning. Further, in response to the defense's challenges for cause, the court excused five potential jurors for police bias. Thus, neither the statements of the challenged juror nor the actions of the trial court in the *voir dire* process support Williams' argument that the trial court impermissibly seated a biased juror. Accordingly, we hold that the seating of D.W.F. was not reversible error.

Affirmed.

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prosecutor objected to "that motion" and the trial court denied "the motion." Our analysis and holding is the same regardless of whether the defense actually moved to dismiss D.W.F. for cause.

(2)

Supreme Court, U.S.
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No. 99-140

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1999

Edbert Neal Williams,
Petitioner,

v.

The State of Minnesota,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION

MIKE HATCH
Attorney General State of Minnesota

SUSAN E. GAERTNER
Ramsey County Attorney

MARK NATHAN LYSTIG
Assistant Ramsey County Attorney
Counsel of Record
50 Kellogg Blvd. West, Suite 315
St. Paul, Minnesota 55102
(651) 266-3083

Attorneys for Respondent State of Minnesota

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QUESTION PRESENTED

Petitioner Williams was convicted for attempted murder of his ex-girlfriend and murder of her grandmother. Witnesses placed him at or near the scene. Petitioner discovered evidence another might also have had a motive to commit the crimes, but could not connect that person to the scene. The trial court excluded the evidence as irrelevant, and the Minnesota Supreme Court affirmed. Was non-disclosure by the state of inadmissible evidence a violation of *Brady v. Maryland?*

TABLE OF CONTENTS

Question presented i

Table of Authorities iii

Opinions Below 1

Jurisdiction 1

Statement of the Case 2

A. Facts Before the Jury 4

B. The Trial Court's Evidentiary Ruling 9

C. Review by the Minnesota Supreme Court 10

Reasons for Denying the Petition 12

A. Summary 12

B. The decision of the Minnesota Supreme Court rests on an adequate and independent state law ground. 13

C. The Minnesota Supreme Court applied the correct standard in holding that the suppressed evidence was not material under *Brady v. Maryland.* 15

Conclusion 22

TABLE OF AUTHORITIES

FEDERAL CASES

Brady v. Maryland, 295 U.S. 78 (1935) i, Passim

Coleman v. Thompson, 501 U.S. 722 (1991) 1, 13-14

Estelle v. McGuire, 502 U.S. 62 (1991) 14

Kyles v. Whitley, 514 U.S. 419 (1995) 15, 16

United States v. Agurs, 427 U.S. 97 (1976) 15, 16, 17

*United States v. Bagley,*473 U.S. 667 (1985) 15, 16, 19

STATUTES AND RULES

Title 28 U.S.C. § 1257 1

Sup. Ct. R. 10 12-13

RESPONDENT'S BRIEF IN OPPOSITION

Respondent State of Minnesota asks this Court to deny the Petition for a Writ of Certiorari seeking review of the decision of the Minnesota Supreme Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at *State v. Williams,* 573 N.W.2d 227 (Minn. 1999), and is reprinted in the Appendix to the Petition at pages A-1 to A-24. The Ramsey County District Court (the trial court) did not issue an opinion.

JURISDICTION

Petitioner invokes the jurisdiction of the Court pursuant to 28 U.S.C. § 1257.

This Court has no jurisdiction because the judgment of the Minnesota Supreme Court rests on an adequate and independent state law ground. An opinion of this Court on the asserted Federal Law question would be merely advisory and would not effect the judgment of the state court. *Coleman v. Thompson,* 501 U.S. 722, 729, 111 S.Ct. 2546, 2553-54, 115 L.Ed.2d 640 (1991).

STATEMENT OF THE CASE

A jury found Petitioner Edbert Williams guilty for the attempted murder of his ex-girlfriend Shelly Campeau, and for the murder of Genelda Campeau, Shelly's grandmother. The trial court sentenced petitioner to life imprisonment for murder and a consecutive sentence of 15 years for the attempted murder. Petitioner appealed directly to the Minnesota Supreme Court, arguing, among other things, that there had been a violation of *Brady v. Maryland*. (*See, State v. Williams, supra., at* A-2. Hereafter references to the decision of the Minnesota Supreme Court will be only to the pages in the Appendix to the Petition.) They affirmed the convictions.

Petitioner's defense at trial was that the murder was committed by a third person. (A-16.) During trial, petitioner attempted to introduce evidence of crimes committed against the Campeaus by another of Shelly Campeau's former boyfriends, Gary William Bultman. (*See*, trial transcript, page 1373. Hereafter, "T x". *See, also,* A-8.) Petitioner had learned of the evidence and attempted to introduce it on cross-examination of Shelly Campeau without disclosing it to the prosecution. (A-9, -14.) The prosecution had not disclosed the evidence to the defense. (A-14.) The prosecutors objected, claiming no knowledge of the evidence and lack of notice. (A-4, -9.) The judge recessed the trial for one day to assess the information. (A-4, -9.)

Upon reconvening, petitioner's counsel moved to dismiss the prosecution, charging that the failure to disclose the Bultman evidence was a violation of *Brady v.*

Maryland. (T 1457.) Some of the information was known to the office of the Ramsey County Attorney, but was unknown to the prosecutors responsible for petitioner's prosecution. (A-9.)

The trial court denied the motion to dismiss and found that there had been no violation of *Brady v. Maryland.* (T 1472-73.) Because there was no evidence that Bultman was at or near the scene of the murder, the trial court ruled as a matter of state law that the evidence was not relevant and therefore inadmissible. (T 1476. A-10.) The Minnesota Supreme Court affirmed the holding that the Bultman evidence was irrelevant and inadmissible. (A-11, -14.)

The holding that the evidence was irrelevant and inadmissible was based on state law, but the Minnesota Supreme Court went on to hold that the evidence was not material and therefore there had been no violation of *Brady v. Maryland.*

All of the evidence that petitioner claims was not disclosed was available to petitioner by the time the trial court ruled that it was irrelevant and not admissible. Petitioner did not move for a mistrial or for a continuance to allow him to seek other information. He does not claim that there is any other evidence connecting Bultman to the crime. There is no additional evidence to add to that available to both the trial court and the Minnesota Supreme Court when they decided that there had been no violation of *Brady v. Maryland.*

The Petition for Certiorari questions the application of *Brady v. Maryland* by the Minnesota

Supreme Court, claiming that they misconstrued the meaning of "materiality". Although Petitioner asks this Court to find that the evidence is "material" under the *Brady* analysis, his request for relief seeks not a new trial before which he will have adequate time to prepare, but a new trial where the Bultman evidence is admitted. He seeks not a change in the application of *Brady*, but a ruling by this Court that the evidence—all of which was available at the time of his trial—is admissible at the state court trial.

A. Facts Before the Jury

1. Summary

Genelda Campeau died from stab wounds in her 1222 Edmond Avenue, St. Paul, Minnesota home on January 12, 1996. Genelda's granddaughter, Shelly Campeau, witnessed the murder and was stabbed twice. Shelly unequivocally identified Petitioner Edbert Neal Williams as the murderer. Her testimony was corroborated by physical evidence. A passing motorist saw and identified Petitioner as the assailant. In jail after his arrest, Petitioner told his cell-mate D.M.I. that he killed Genelda Campeau and stabbed Shelly. Petitioner attempted to hire D.M.I. to finish killing Shelly.

2. Genelda Campeau is Murdered

Petitioner and Shelly Campeau dated but their relationship was turbulent and abusive. (T. 1272-73, 1283, 1551-61, 1567-71.) In 1994 they had a child, Dominic, but Shelly left Petitioner and moved in with her grandmother Genelda Campeau. (T. 1303-04.) Shelly and

Petitioner remained friends in 1995 and Petitioner would sometimes visit his son at Shelly's invitation. (T. 1304-05.) On January 12, 1996, Petitioner uncharacteristically took the initiative and phoned Shelly, asking to see Dominic. (T. 1313.) After some reluctance Shelly agreed and Petitioner arrived between 6:30 and 7:00 p.m. that night. (T. 1317.)

Shelly asked Petitioner to remove his shoes, and they and Genelda watched television in the living room while Dominic played nearby. (T. 1320; 1330.) Shelly left the house once to chat with a friend outside for a few minutes, and at one point Genelda mentioned that she had received a number of hang-up calls thought to be placed by another of Shelly's former boyfriends, Gary Willliam ("Bill") Bultman. (T. 1328-31.)

Shelly left the living room to get a diaper for Dominic, and only seconds later heard a thumping noise. (T. 133-36.) She returned to see that her grandmother had fallen from the couch, and Petitioner was standing over her, stabbing her with a knife and something white in his right hand. (T. 1336-37.) Shelly saw Petitioner stab her grandmother twice in the chest. As Dominic stood by crying and screaming, Shelly tried to pull Petitioner away. (T. 1339-43.) Petitioner turned to Shelly and told her he'd wanted to kill her for a long time, and threatened Dominic. (T. 1344-45.) Petitioner reached over Shelly and stabbed her in the back. (T. 1347.)

Shelly maneuvered toward the porch, attempting to get outside. In the kitchen, Petitioner stabbed her in the chest, breaking the knife. (T. 1348-50.) Petitioner tried to drag Shelly back in the house by her sweatshirt, but she

slipped out of it. Once outside, she leaned against the house. (T. 1350, 1353.) Petitioner followed and the struggle continued until Shelly broke free and ran into the street. (T. 1353-54.)

Donna Spangler was driving by and saw a woman and a man fighting on the sidewalk. She heard the woman shout "He killed my grandma!" and "Please help me!" (T. 1105; 1113.) Spangler heard the man say "Shut the fuck up, shut the fuck up. I'll kill you, bitch". (T. 1113.) Spangler drove to a nearby store and convinced an off-duty police officer to return to the scene. (T. 1117-18; 1137-38.) Meanwhile, a neighbor heard Shelly's screaming and called 911. (T. 1097-98.) Petitioner got his coat and shoes from the house and fled down an alley. (T. 1354-55.)

3. The Investigation

Four officers who arrived at the scene described Shelly as hysterical, screaming, and traumatized as she told them that Petitioner stabbed and killed her grandmother. She gave them his address. (T. 1153; 1182, 1193-94.) Shelly was taken to the hospital, where her two stab wounds were treated. (T. 1260-61.) Either could have caused her death if it had penetrated her chest. (T. 1264.)

The officer who found Geneida dead on the living room floor called for more assistance. (T. 1168.) Two officers responding to the call saw a man matching the killer's description emerge from an alley a short distance from the Campeau home. (T. 1206.) The man, Petitioner, appeared to have blood on his hands, and the officers

arrested him after Donna Spangler identified him as the man she saw fighting with Shelly. (T. 1210, 1235-36.)

The investigating homicide detective arrived at about 8:00 p.m. and observed a blood stain on the outside wall of the house. (T. 1645-55.) On a window ledge a white, slashed sock stained with blood contained a knife handle; a broken blade and blood stains were found on the kitchen floor. (T. 1654.) The detective examined Genelda Campeau's body and saw wounds to her chest, throat and head, and noted the blood next to her was liquid. (T. 1656-58.)

Blood scrapings, the broken knife, the cut sock and Petitioner's clothing were sent to the crime lab for analysis. (T. 1680-91.) Fingerprint analysis could not be done on the submitted items because the chemical used for that testing would have contaminated the blood on each. (T. 1731.) The blood on the knife matched Genelda Campeau's, and the blood on the storm door matched Shelly's. (T. 1751, 1755, 1763.) The police found blood on the insides of Petitioner's shoes and blood on the kitchen floor, but in amounts too small to be successfully analyzed; tests found no blood on the rest of Petitioner's clothing. (T. 1755-56; 1762, 1765.)

The medical examiner identified 21 wounds on Genelda's body and determined she was the victim of a homicide. (T. 1801, 1803-05; 1815-16; 1826.) The medical examiner testified both her observations and those of the detective were consistent with a death perpetrated by a right hand assailant occurring at approximately 7:30 p.m. (T. 1782, 1824-25, 1857.)

4. Petitioner Hires a Cell-Mate to Kill Shelly

In jail during August, 1996, Petitioner shared a cell with D.M.I., an inmate with several theft and forgery convictions. (T. 1876, 1877, 1882.) Petitioner told D.M.I. that he killed Genelda and stabbed Shelly, and wanted to "get rid of" Shelly because she was the key witness in the case against him. (T. 1883-84; 1888.) D.M.I. was released before Petitioner's trial. Petitioner offered D.M.I. one thousand dollars to kill Shelly, at that time living with her mother. (T. 1892-94.) Petitioner furnished D.M.I. with a list of names and descriptions of Shelly, her mother, and a car at her mother's home. (T. 1897-98.) Much of this information was not part of the record in this case and D.M.I. could have only learned of it from Petitioner.

D.M.I. notified the police, who began monitoring Petitioner's phone conversations with D.M.I. (T. 1904-09; 2013.) D.M.I. received several calls from Petitioner; the recordings captured details of the contract to kill Shelly and were played for the jury. (T. 2013, 2036; Trial Exhibits 47 and 48.) It was arranged that D.M.I. would pick up three hundred dollars from Petitioner's brother as partial payment for murdering Shelly. (T. 1908.) Police videotaped D.M.I.'s meeting with Petitioner's brother Lee Williams, who retrieved three hundred dollars from his car, handed it to D.M.I., and "high-fived" to seal the deal. (T. 1911; 2067-71.)

The jury found Petitioner guilty of first degree murder of Genelda Campeau and first degree attempted murder of Shelly Campeau.

B. The Trial Court's Evidentiary Ruling

Well into trial, Petitioner attempted to introduce evidence that he hoped would show that Gary William Bultman had committed the murder. (T. 1373.) Trial was recessed for one day while the trial court reviewed the evidence and considered arguments.

Shelly's relationship with Bultman had also been turbulent, and Bultman faced charges for damaging property, burglarizing, and peering in windows at the Campeau home. (T. 1426, 1435-36.) Since the detective in the case knew about Bultman but did not pursue him as a suspect, Petitioner accused the State of deliberately hiding this information from him in violation of *Brady v. Maryland.* (T. 1455.)

The prosecutors in Petitioner's case had only constructive, and not actual, knowledge of Bultman's connection with the Campeaus. They argued that none of the evidence offered by Petitioner connected Bultman to the crimes in this case. (T. 1374.)

The trial judge carefully considered Bultman's contacts with the Campeaus, including Bultman's past abuse of Shelly and tense relationship with Genelda. (T. 1475-76.) The court determined that none of that evidence connected Bultman with 1222 Edmond Avenue on January 12, 1996, and found it irrelevant and inadmissible.

C. Review by the Minnesota Supreme Court

On direct appeal, the Minnesota Supreme Court affirmed. Rejecting Petitioner's challenge to the excluded Bultman evidence, the court explained that Petitioner had not laid the required foundation connecting Gary William Bultman with *any* of the times, places, or events of this murder and stabbing. (A-13.) The evidence was therefore irrelevant and inadmissible under Minnesota law. In answer to Petitioner's charged *Brady* violation, the court reasoned that the facts offered about Bultman did not meet the "materiality" test of *Brady*:

> Nothing in the Bultman evidence itself exonerates [Petitioner], nothing directly impeaches or contradicts the testimony of any of the state's witnesses, and [Petitioner] failed to provide any evidence linking Bultman to the charged crimes. Moreover, the conclusions that [Petitioner] asks us to draw from the Bultman evidence – that Bultman, not [Petitioner], killed Genelda and attacked Shelly – are mere speculation and contradict the sworn testimony of at least three witnesses. Given the collateral and speculative nature of this evidence, the prosecution's failure to disclose it does not undermine our confidence in the outcome of [Petitioner's] trial.

(A-15 to A-16.)

Petitioner posited that even if the Bultman evidence was immaterial, the prosecution's failure to

disclose it hampered his investigation and ultimately, his trial strategy. The court looked at what effect undisclosed evidence may have had on the defendant's preparation or presentation of his case, and answered:

> [W]e find no merit to [Petitioner's] claim that the prosecution's failure to timely disclose the Bultman evidence had material consequences to on the defense's ability to investigate or prepare for its case. Nothing…prevented the defense from questioning… witnesses about the possibility that a third party may have participated in the killing…. [T]he theory that a person other than [Petitioner] committed the crimes was the defense's theory… throughout trial.
>
> Moreover, *the defense knew of Bultman's relationship with the Campeaus prior to trial,* [having been given] and reviewed the grand jury transcripts showing Shelly said "Bill" had repeatedly called Genelda's house on the day of the killing. *The defense chose not to investigate who Bill was until after the jury had been seated....*
>
> [A]t the defense's request, the court granted the parties a day to fully review the Bultman evidence…[and the] defense never indicated that additional time was needed to further investigate the Bultman evidence… The trial court [offered to reconsider its ruling] if additional evidence adding validity to the defense's claim that Bultman killed Genelda

> came to light...[but] *no such evidence was ever offered.*

(A-16 to A-17) (emphasis supplied). The Court held that neither the Bultman evidence nor the state's failure to timely disclose it were material to Petitioner's case, and so the state's failure to disclose the evidence was not reversible error. (A-17.)

REASONS FOR DENYING THE PETITION

A. Summary

This Court has no jurisdiction to review a state court judgment when the decision of the state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. Where the resolution of any independent federal ground for the decision will not affect the judgment, a decision of this Court would be merely advisory. The Minnesota Supreme Court decided that the evidence of another person's motive to commit the crime was not relevant and therefore not admissible under state law. A decision by this court that the evidence should have been disclosed by the state before trial would be merely advisory, and have no affect on the judgment.

This Court will grant a writ of certiorari to review a state court judgment only for compelling reasons, such as where a state court has decided an important federal question in a way that conflicts with the relevant decisions of this Court. S. CT. R. 10(c). Where an asserted error consists of misapplication of a properly

stated rule of law, granting of the petition is "rare". S. CT. R. 10. In affirming the trial court in this case, the Minnesota Supreme Court properly followed established case law. The Minnesota Supreme Court's decision has not decided an important federal question in a way that conflicts with the relevant decisions of this Court.

Petitioner declares that the Minnesota Supreme Court committed a constitutional error by ruling that the disclosure requirements of *Brady v. Maryland* are inapplicable where a defendant's investigation might have produced the undisclosed evidence. Pet., P. 10, 12. This is not the holding or effect of the Minnesota Supreme Court's decision. A plain reading of the opinion shows that the Minnesota Supreme properly considered, as one of many factors bearing on the materiality of the undisclosed evidence, the actual effects the nondisclosure had on the preparation or presentation of Petitioner's case. Thus, this case really presents only fact specific issues that were adequately addressed and properly decided by the Minnesota Supreme Court. Petitioner has failed to present any compelling reasons why further review is warranted. Respondent State of Minnesota respectfully requests that the Petition be denied.

B. The decision of the Minnesota Supreme Court rests on an adequate and independent state law ground.

This Court will not issue a Writ of Certiorari to review a judgment of a state court when the decision of the state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson,* 501 U.S.

722, 729, 111 S.Ct. 2546, 2553-54, 115 L.Ed.2d 640 (1991).

The judgment of the Minnesota Supreme Court rests on an adequate and independent state ground, sufficient to support the judgment. Petitioner claims that the failure to disclose certain evidence to him before trial denied him a fair trial and due process of law. The Minnesota Supreme Court held that the evidence was not relevant to the issues at the trial, and was therefore not admissible. That determination was based entirely on state law.

This Court does not review state court determinations on the admissibility of evidence. *Estelle v. McGuire*, 502 U.S. 62, 68, 112 S.Ct. 475, 480, 116 L.Ed.2d 385 (1991). Since the evidence was not admissible, it was not material. Since it was not admissible—and will not be admissible even if petitioner were granted a new trial—the failure of the state to disclose the evidence before trial did not deny petitioner a fair trial.

The decision of the Minnesota Supreme Court that the Bultman evidence was inadmissible is an adequate and independent state law ground to support the judgment that the failure to disclose the evidence did not operate to deny petitioner a fair trial.

C. The Minnesota Supreme Court Applied the Correct Standard in Holding That The Suppressed Evidence Was Not Material Under **Brady v. Maryland**

Brady v. Maryland requires prosecutors to disclose certain evidence known to the prosecutor and unknown to the defense. 373 U.S. 83, 83 S. Ct. 1194, 10 L..Ed.2d 215 (1963). Evidence to be disclosed is that both favorable to the accused and "material either to guilt or punishment." *Id.* Implicit in the requirement of materiality is the concern that the suppressed evidence might have affected the outcome of the trial. *United States v. Agurs*, 427 U.S 97, 104, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976).

Favorable evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490 (1995). "A 'reasonable' probability of a different result is accordingly shown when the government's evidentiary suppression 'undermines the confidence in the outcome of the trial.'" *Id.* at 434, S.Ct. 1555 (quoting *United States v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381, 87 L.Ed.2d 481 (1985)).

In determining whether a prosecutor's omission undermines the confidence in the outcome of the trial, the omission must be evaluated in the context of the entire record. *Agurs*, 427 U.S. at 112, 96 S.Ct. at 2402. This evaluation includes 1) the consideration of whether there remained no reasonable doubt of the defendant's guilt,

even had the additional evidence been admitted, and 2) any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case. *Id.* at 112-113, 96 S. Ct. at 2402, *Bagley*, 473 U.S. at 683, 105 S.Ct. at 3384.

1. The Minnesota Supreme Court Properly Considered the Bultman Evidence in Light of the Overwhelming Evidence of Petitioner's Guilt

It is the petitioner's burden to show that in light of all the evidence, including that untainted by the *Brady* violation, it is reasonably probable that a jury would have entertained a reasonable doubt regarding petitioner's guilt. *Agurs*, 427 U.S. 97 at 112-113, 96 S.Ct. at 2402. "It is simply not enough to show that the undisclosed evidence would have allowed the defense to weaken, or even destroy, the particular prosecution witnesses or items of prosecution evidence towhich the undisclosed evidence relates." *Kyles*, 514 U.S. at 461, 115 S.Ct. at 1578.

The Minnesota Supreme Court determined that given the record in this case, their confidence in Petitioner's trial was not undermined. (A-15.) The court noted that nothing in the Bultman evidence exonerated Petitioner, no Bultman facts served to impeach or contradict the testimony of three sworn witnesses, and Petitioner had not shown *any* evidence linking Bultman to charged crimes. (A-15.) The court regarded the defense's theory that Bultman killed Genelda as "mere speculation", and the evidence of his past difficulties with the Campeaus as "collateral". (A-15 to A-16.) The court was persuaded by the "substantial affirmative evidence that Bultman did not commit the charged crimes":

> Shelly, the only eyewitness to the killing, placed [Petitioner], not Bultman, at the crime scene. Similarly, Spangler identified [Petitioner], not Bultman, as the man fighting with and threatening to kill Shelly in Genelda's yard. Moreover, D.M.I. testified that [Petitioner] admitted to having committed the charged crimes. In light of the overwhelming eyewitness testimony liking [Petitioner] to the charged crimes, [Petitioner's] failure to provide any evidence liking Bultman to Genelda's house on the night of the killing is fatal to his claim.

(A-13, incorporated into *Brady* analysis by reference at A-15.)

Contrary to Petitioner's assertions, the court did not singularly rely on the fact that Petitioner had not placed Bultman at the scene of the murder, but looked at that fact in the context all of the circumstances and testimony in this case. *See* Pet., P. 8. Considering not only the undisclosed evidence on its face, but also the overwhelming evidence of Petitioner's guilt was a proper analytical framework for determining materiality. *Cf. Agurs,* 427 U.S. at 112-113, 96 S.Ct. at 2402 ("If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial.").

Petitioner, in an effort to diminish the strength of the evidence implicating him, claims an officer's observations suggested Genelda had been dead for hours, and the wounds to Genelda's body were not consistent

with that of a right-handed assailant. Pet., P. 2, 3, n. 2. To the contrary, the medical examiner specifically testified that both the detective's observations and her own were consistent with a homicide perpetrated by a right handed assailant occurring at approximately 7:30 p.m. (T. 1782, 1824-25, 1857).

Petitioner further advances a theory of inept police work evidenced by the detective's failure to include Bultman in his investigation. Pet., P. 13, n. 6. The detective personally observed stab wounds and liquid blood near Genelda's body, and found her arm moved normally, suggesting a very recent homocide. (T. 1655-60.) Shelly Campeau told police Petitioner stabbed her grandmother, and her testimony of the circumstances surrounding the murder was corroborated by the physical evidence in the home. Moments after the homicide was broadcast, police found Petitioner a few blocks from the Campeau home with blood on his hands and in his shoes. (T. 1206, 1755-56.) Donna Spangler identified him as having been the man in the Campeau yard fighting with Shelly. (T. 120, 1235-36.) The detective was wise to concentrate his investigative efforts on Petitioner.

In jail, Petitioner admitted to his cellmate, D.M.I., that he committed the crimes, and contracted to kill Shelly, the strongest witness in the case against him. Petitioner insists that D.M.I.'s testimony is not worthy of credit (Pet., P. 8, n. 4) even though the police tape recorded the contract to kill Shelly and videotaped the payoff made by Petitioner's brother. Despite Petitioner's claims of weaknesses in the state's case, the sum of the evidence overwhelmingly proved Petitioner's guilt. The Bultman evidence, having no nexus with the murder and

stabbing, did nothing to undermine confidence in the guilty verdict.

2. The Minnesota Supreme Court Properly Considered the Effect that the State's Nondisclosure Might Have Had on Petitioner's Trial Preparation and Presentation

Petitioner claims, essentially, that the Minnesota Supreme Court should not have rested any of its decision on his own pursuit of the undisclosed Bultman evidence. (Pet., P. 9-12.) This Court has held, however, that in addition to assessing the sum of the factual evidence that may have been put before a jury, a reviewing court may also, in determining materiality, conduct an assessment of the effect the omission had on the preparation or presentation of the defendant's case. *Bagley,* 473 U.S. at 683, 105 S.Ct. at 3384. The reviewing court should "assess the possibility that [an adverse] effect might have occurred in light of the *totality of the circumstances* and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response." *Id.* (emphasis supplied).

In this case, the Minnesota Supreme Court, looking at the totality of the circumstances, articulated several reasons for its conclusion that there was "no merit" to Petitioner's contention that the Bultman evidence in this case had an adverse effect on the preparation or presentation of his case. (A-16.) First, the court noted that it had always been the defense's theory that someone other than Petitioner murdered Genelda and

stabbed Shelly, and the defense was free to seek out witnesses to so testify. (A-16.)

Second, the court observed that the defense in fact knew of Bultman's relationship with the Campeaus prior to trial, having reviewed the grand jury transcripts and police reports which document that Shelly said "Bill" had been calling her grandmother's house repeatedly on the day of the murder. (A-17.) The defense chose not to investigate who "Bill" was until after the jury was seated. Although defense counsel claimed he did not have knowledge of those reports, he knew their contents and began to question Shelly about them during cross-examination at trial. (A-17.)

Third, the Minnesota Supreme Court recognized that the trial court had granted the parties a day to review the evidence, and that the defense never requested more time. (A-17.) The trial court, upon finding the Bultman evidence inadmissible, indicated a willingness to reconsider its ruling should more evidence that Bultman killed Genelda come to light. (A-17.) No such evidence was offered at trial, nor has such evidence surfaced in the nearly three years since trial, despite Petitioner's "significant but unsuccessful efforts" to find some. *See* Pet., P.14, n. 7.

Petitioner claims that "the possibility that the defense might have discovered evidence had it looked in the right places is irrelevant" to the inquiry of materiality. Pet., P. 11. In this case the nature of defense's investigation was highly relevant, because there is no real issue of what might have been discovered. Petitioner apparently had the Bultman evidence *in its entirety* at the

time of trial, since no additional evidence has been offered. Consequently, Petitioner has not suffered from the prosecution's nondisclosure. Since the reviewing court may consider detriment to the defendant's case preparation in assessing materiality, a finding of no detriment supports the conclusion that the evidence was not material.

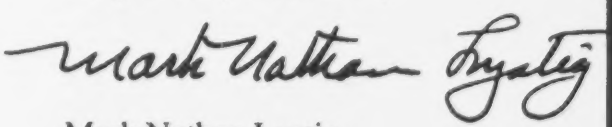
The Minnesota Supreme Court's decision does not, as Petitioner claims, "depend" on the fact that he could have found the undisclosed evidence by his own investigation. *See* Pet., P. i. Rather, the fact that he in fact *did* discover the undisclosed, irrelevant Bultman evidence, but never found more despite trial court accommodations, was but one consideration among many which led the court to its reasoned conclusion that the Bultman evidence was immaterial. Consequently, the court properly held that there was no *Brady* violation.

CONCLUSION

The Minnesota Supreme Court correctly applied the *Brady* standards set by this Court. Petitioner disagrees with the result, but does not coherently explain how the application was flawed, or that some new rule of law should be adopted. The decision of the Minnesota Supreme Court holding the evidence inadmissible on state law grounds makes any decision by this Court on disclosure requirements merely an advisory opinion. Respondent State of Minnesota respectfully requests that the Petition be denied.

Dated: August 19, 1999

Respectfully submitted,



Mark Nathan Lystig
Assistant Ramsey County
Attorney
Counsel of Record
50 West Kellogg Blvd.
Suite 315
St. Paul, Minnesota 55102
(651) 266-3083

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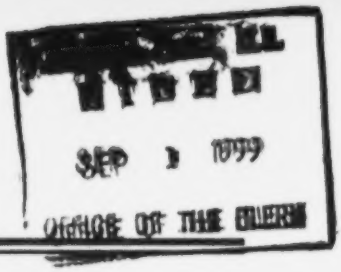

No. 99 -140

In the

Supreme Court of the United States

October Term, 1999

Edbert Neal Williams,

Petitioner,

v.

The State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Paul Charles Thissen
Counsel of Record
Special Assistant State Public Defender
Briggs and Morgan, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2157
(612) 334-8400

Attorney for Petitioner

1999 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

9 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REASONS FOR GRANTING THE PETITION 1

A. The Minnesota Supreme Court's Decision Is Not Supported By An Adequate And Independent State Ground 1

B. The State's Failure To Disclose The Bultman Evidence Was Material To The Defense's Preparation And Presentation Of The Case 2

CONCLUSION 5

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Brady v. Maryland, 373 U.S. 83 (1963) 1, 2, 3, 5

Kyles v. Whitley, 514 U.S. 419 (1995) 3

United States v. Bagley, 473 U.S. 667 (1985) 3

The Minnesota Supreme Court erred when it ruled that the State of Minnesota's failure to disclose favorable evidence to Petitioner was not material under *Brady v. Maryland*, 295 U.S. 78 (1963). The hidden evidence showed that another individual – Gary William Bultman – had a motive and the means to attack and kill the victims in this case. Bultman had repeatedly threatened, harassed and abused the victim over several months before the crime.

The Minnesota Supreme Court erroneously reasoned that the undisclosed Bultman evidence was not material because Petitioner might have found the evidence on his own. That holding is contrary to the Court's precedent. The purpose of the *Brady* rule is to encourage the State to disclose favorable evidence to the defense. What the defense might have found is irrelevant. Because it is plausible that timely disclosure of the evidence would have allowed Petitioner to connect Bultman to the crime, the nondisclosure was material. In addition, because Petitioner's *Brady* complaint relates to the effect the State's nondisclosure had on his investigation and case preparation – and not on the impact of the evidence he eventually located – the Minnesota Supreme Court's ruling on the admissibility of the evidence Petitioner actually found is irrelevant to the *Brady* violation. The Minnesota Supreme Court's decision should be reversed.

REASONS FOR GRANTING THE PETITION

A. The Minnesota Supreme Court's Decision Is Not Supported By An Adequate And Independent State Ground

The State of Minnesota wrongly asserts that a decision of this Court reversing the Minnesota Supreme Court's

rejection of Petitioner's claim under *Brady* will be "merely advisory." (Brief in Opposition at 12, 14.) The State argues that, because the Minnesota Supreme Court affirmed the trial court's refusal to admit the undisclosed evidence that Petitioner did locate on his own, the *Brady* violation was not material. But that analysis ignores the reason why the Minnesota Supreme Court found that the trial court did not abuse its discretion in excluding the undisclosed evidence.

The sole reason that the state court affirmed the exclusion of the evidence was Petitioner's failure to adduce evidence "linking Bultman to Genelda's house on the night of the killing." (A-13; *see* Petition for Writ of Certiorari at 7-8.) Yet, the inability of Petitioner to present such evidence is the direct result of the *Brady* violation: Had the State disclosed the Bultman evidence in a timely manner, it is highly plausible that Petitioner's counsel would have located Bultman and obtained information linking Bultman to the scene of the crime. As such, the admissibility of the evidence Petitioner actually tried to introduce is entirely distinct from, and subordinate to, the *Brady* violation at issue here. Just because the evidence Petitioner did ultimately find was immaterial does not mean that the *Brady* violation – which plausibly prevented Petitioner from getting better evidence – was also not material.

B. The State's Failure To Disclose The Bultman Evidence Was Material To The Defense's Preparation And Presentation Of The Case

In its Brief in Opposition, the State ignored the essential flaw in the Minnesota Supreme Court's opinion. The State assumed that the materiality of its failure to disclose the Bultman evidence should be analyzed by comparing the

Bultman evidence that Petitioner found on his own and the evidence presented at trial. That position renders meaningless this Court's decisions holding that when determining *Brady* materiality, a court must assess the effect that the omission had on the preparation or presentation of the defendant's case. *United States v. Bagley*, 473 U.S. 667, 682 (1985). The adverse effect of non-disclosure in this case is that Petitioner may have been able to place Bultman at the scene had the State disclosed the Bultman evidence in a timely fashion in January 1996; almost nine months before trial.

The State's only response is that Petitioner has not found any additional evidence since trial placing Bultman at the scene. Simple common sense, however, tells us that it is much more probable that evidence will be found if looked for immediately after a crime. Since the State's conduct caused the present inability to assess what may have happened had timely disclosure been made, it should bear the burden of establishing that the evidence was not material. Such a role creates the proper incentive for prosecutors to disclose evidence – the precise purpose of the *Brady* rule. *See Kyles v. Whitley*, 514 U.S. 419, 439-40 (1995).

The State does not directly address Petitioner's central argument that the Minnesota Supreme Court's rule, that *Brady* materiality turns on the possibility that a defendant may have found the evidence himself, is contrary to this Court's precedent. Instead, the State simply recites the evidence against Petitioner. Again, the State misses the point. Had the Bultman evidence been disclosed, it is plausible that the evidence at trial could have changed and the outcome of the trial been different.

First, while Shelly Campeau identified Petitioner as the killer, she also had an interest in protecting her current boyfriend – Bultman – with whom she talked several times on

the day of the murder. (Tr. 1372-73.) Donna Spangler's testimony that she saw Bultman and Shelly Campeau struggling outside the house is consistent both with the State's theory (that Petitioner attacked Shelly and killed Genelda Campeau) and the defense theory (that Genelda was dead when Petitioner arrived and that Shelly was trying to keep Petitioner on the scene to frame him). Indeed, Spangler's story changed in the course of the investigation. In some versions, Shelly is attempting to escape from Petitioner. In others, Petitioner is the one trying to elude Shelly. (Tr. 1125, 1130-31, 1516-17.)

Additionally, the State misstates the record when it claims that the police tape of discussions between Petitioner and a jailhouse informant records a contract to kill Shelly Campeau. It does not. In any event, even if the informant testified truthfully, Petitioner's purported discussions with him are consistent with both the State and the defense theories: Petitioner's fear arose from being accused; not because he was guilty. Finally, the State's discussion of certain investigation details paints a misleading picture. Although there was evidence that the killing occurred about 7:30 p.m. and that the wounds might be consistent with a right handed assailant (evidence pointing to Petitioner's guilt), other evidence puts the time of Genelda Campeau's death significantly earlier (before Petitioner arrived at the house) and suggests that the killer was left-handed. (Tr. 1186, 1162, 1856.)

The fundamental point is that substantial evidence supported Petitioner's claim that someone else killed Genelda and that Petitioner arrived after the murder occurred. Of course, Bultman fits the bill as the actual killer. It is plausible, then, that timely disclosure of the Bultman evidence would have allowed the defense to connect Bultman more directly to

the crime. As such, the State's complete failure to disclose the Bultman evidence was material under *Brady*. The fact that Petitioner may have discovered the Bultman evidence on his own is simply beside the point.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant this petition for writ of certiorari to review the decision of the Minnesota Supreme Court.

Dated: August 31, 1999

Respectfully submitted,

Paul Charles Thissen
Counsel of Record
Special Assistant State Public Defender
BRIGGS AND MORGAN, P.A.
2400 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2157
(612) 334-8400